

§ 5712. Validity of affidavits

Any such oath, affirmation, affidavit, or examination, when certified under the hand of any such employee by whom it was administered or taken and authenticated by the seal of the Department, may be offered or used in any court of the United States and without further proof of the identity or authority of such employee shall have like force and effect as if administered or taken before a clerk of such court.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1237, § 3312; renumbered § 5712, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3312 of this title as this section.

Pub. L. 102-83 substituted “Department” for “Veterans’ Administration”.

§ 5713. Disobedience to subpoena

In case of disobedience to any such subpoena, the aid of any district court of the United States may be invoked in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which the inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any officer, agent, or employee of any corporation or to any other person, issue an order requiring such corporation or other person to appear or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1237, § 3313; renumbered § 5713, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, § 14(d)(6)(A), (B), June 13, 1991, 105 Stat. 286.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3313 of this title as this section.

Pub. L. 102-54 amended section as in effect immediately before the enactment of Pub. L. 102-40 by substituting “subpoena” for “subpena” in section catchline and in two places in text.

CHAPTER 59—AGENTS AND ATTORNEYS

Sec.	
5901.	Prohibition against acting as claims agent or attorney.
5902.	Recognition of representatives of organizations.
5903.	Recognition with respect to particular claims.
5904.	Recognition of agents and attorneys generally.
5905.	Penalty for certain acts.

AMENDMENTS

1991—Pub. L. 102-40, title IV, § 402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 3401 to 3405 as 5901 to 5905, respectively.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 10 sections 1553, 1554.

§ 5901. Prohibition against acting as claims agent or attorney

Except as provided by section 500 of title 5, no individual may act as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Secretary unless such individual has been recognized for such purposes by the Secretary.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1238, § 3401; Pub. L. 91-24, § 12(a), June 11, 1969, 83 Stat. 34; Pub. L. 99-576, title VII, § 701(79), Oct. 28, 1986, 100 Stat. 3298; renumbered § 5901, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3401 of this title as this section.

Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-83, § 4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.

1986—Pub. L. 99-576 substituted “such individual” for “he”.

1969—Pub. L. 91-24 substituted “Except as provided by section 500 of title 5, no individual may act” for “No individual may act”.

§ 5902. Recognition of representatives of organizations

(a)(1) The Secretary may recognize representatives of the American National Red Cross, the American Legion, the Disabled American Veterans, the United Spanish War Veterans, the Veterans of Foreign Wars, and such other organizations as the Secretary may approve, in the preparation, presentation, and prosecution of claims under laws administered by the Secretary.

(2) The Secretary may, in the discretion of the Secretary, furnish, if available, space and office facilities for the use of paid full-time representatives of national organizations so recognized.

(b) No individual shall be recognized under this section—

(1) unless the individual has certified to the Secretary that no fee or compensation of any nature will be charged any individual for services rendered in connection with any claim; and

(2) unless, with respect to each claim, such individual has filed with the Secretary a power of attorney, executed in such manner and form as the Secretary may prescribe.

(c)(1) Unless a claimant specifically indicates in a power of attorney filed with the Department a desire to appoint only a recognized representative of an organization listed in or approved under subsection (a), the Secretary may, for any purpose, treat the power of attorney naming such an organization, a specific office of such an organization, or a recognized representative of such an organization as the claimant's representative as an appointment of the entire organization as the claimant's representative.

(2) Whenever the Secretary is required or permitted to notify a claimant's representative, and the claimant has named in a power of attorney an organization listed in or approved under subsection (a), a specific office of such an orga-

nization, or a recognized representative of such an organization without specifically indicating a desire to appoint only a recognized representative of the organization, the Secretary shall notify the organization at the address designated by the organization for the purpose of receiving the notification concerned.

(d) Service rendered in connection with any such claim, while not on active duty, by any retired officer, warrant officer, or enlisted member of the Armed Forces recognized under this section shall not be a violation of sections 203, 205, 206, or 207 of title 18.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1238, §3402; Pub. L. 91-24, §12(b), June 11, 1969, 83 Stat. 34; Pub. L. 98-160, title VII, §703(5), Nov. 21, 1983, 97 Stat. 1010; renumbered §5902, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 104-275, title V, §508(a), Oct. 9, 1996, 110 Stat. 3343.)

AMENDMENTS

1996—Subsecs. (c), (d). Pub. L. 104-275 added subsec. (c) and redesignated former subsec. (c) as (d).

1991—Pub. L. 102-40 renumbered section 3402 of this title as this section.

Subsec. (a)(1). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsecs. (a)(2), (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

1983—Subsec. (a)(1). Pub. L. 98-160, §703(5)(A), substituted "the Administrator" for "he".

Subsec. (a)(2). Pub. L. 98-160, §703(5)(B), substituted "the discretion of the Administrator" for "his discretion".

Subsec. (b)(1). Pub. L. 98-160, §703(5)(C), substituted "the individual" for "he".

Subsec. (c). Pub. L. 98-160, §703(5)(D), substituted "member" for "man".

1969—Subsec. (c). Pub. L. 91-24 substituted "sections 203, 205, 206 or 207 of title 18" for "section 281 or 283 of title 18, or a violation of section 99 of title 5".

EFFECTIVE DATE OF 1996 AMENDMENT

Section 508(b) of Pub. L. 104-275 provided that: "The amendments made by this section [amending this section] apply to any power of attorney filed with the Department of Veterans Affairs, regardless of the date of its execution."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 521, 1711, 3735 of this title; title 10 section 2679.

§ 5903. Recognition with respect to particular claims

The Secretary may recognize any individual for the preparation, presentation, and prosecution of any particular claim for benefits under any of the laws administered by the Secretary if—

- (1) such individual has certified to the Secretary that no fee or compensation of any nature will be charged any individual for services rendered in connection with such claim; and
- (2) such individual has filed with the Secretary a power of attorney, executed in such

manner and in such form as the Secretary may prescribe.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1238, §3403; renumbered §5903, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3403 of this title as this section.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in introductory provisions and wherever appearing in pars. (1) and (2).

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration" in introductory provisions.

§ 5904. Recognition of agents and attorneys generally

(a) The Secretary may recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of claims under laws administered by the Secretary. The Secretary may require that individuals, before being recognized under this section, show that they are of good moral character and in good repute, are qualified to render claimants valuable service, and otherwise are competent to assist claimants in presenting claims.

(b) The Secretary, after notice and opportunity for a hearing, may suspend or exclude from further practice before the Department any agent or attorney recognized under this section if the Secretary finds that such agent or attorney—

- (1) has engaged in any unlawful, unprofessional, or dishonest practice;
- (2) has been guilty of disreputable conduct;
- (3) is incompetent;
- (4) has violated or refused to comply with any of the laws administered by the Secretary, or with any of the regulations or instructions governing practice before the Department; or
- (5) has in any manner deceived, misled, or threatened any actual or prospective claimant.

(c)(1) Except as provided in paragraph (3), in connection with a proceeding before the Department with respect to benefits under laws administered by the Secretary, a fee may not be charged, allowed, or paid for services of agents and attorneys with respect to services provided before the date on which the Board of Veterans' Appeals first makes a final decision in the case. Such a fee may be charged, allowed, or paid in the case of services provided after such date only if an agent or attorney is retained with respect to such case before the end of the one-year period beginning on that date. The limitation in the preceding sentence does not apply to services provided with respect to proceedings before a court.

(2) A person who, acting as agent or attorney in a case referred to in paragraph (1) of this subsection, represents a person before the Department or the Board of Veterans' Appeals after the Board first makes a final decision in the case shall file a copy of any fee agreement between them with the Board at such time as may be specified by the Board. The Board, upon its own

motion or the request of either party, may review such a fee agreement and may order a reduction in the fee called for in the agreement if the Board finds that the fee is excessive or unreasonable. A finding or order of the Board under the preceding sentence may be reviewed by the United States Court of Veterans Appeals under section 7263(d) of this title.

(3) A reasonable fee may be charged or paid in connection with any proceeding before the Department in a case arising out of a loan made, guaranteed, or insured under chapter 37 of this title. A person who charges a fee under this paragraph shall enter into a written agreement with the person represented and shall file a copy of the fee agreement with the Secretary at such time, and in such manner, as may be specified by the Secretary.

(d)(1) When a claimant and an attorney have entered into a fee agreement described in paragraph (2) of this subsection, the total fee payable to the attorney may not exceed 20 percent of the total amount of any past-due benefits awarded on the basis of the claim.

(2)(A) A fee agreement referred to in paragraph (1) is one under which the total amount of the fee payable to the attorney—

(i) is to be paid to the attorney by the Secretary directly from any past-due benefits awarded on the basis of the claim; and

(ii) is contingent on whether or not the matter is resolved in a manner favorable to the claimant.

(B) For purposes of subparagraph (A) of this paragraph, a claim shall be considered to have been resolved in a manner favorable to the claimant if all or any part of the relief sought is granted.

(3) To the extent that past-due benefits are awarded in any proceeding before the Secretary, the Board of Veterans' Appeals, or the United States Court of Veterans Appeals, the Secretary may direct that payment of any attorneys' fee under a fee arrangement described in paragraph (1) of this subsection be made out of such past-due benefits. In no event may the Secretary withhold for the purpose of such payment any portion of benefits payable for a period after the date of the final decision of the Secretary, the Board of Veterans' Appeals, or Court of Veterans Appeals making (or ordering the making of) the award.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1238, §3404; Pub. L. 99-576, title VII, §701(80), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100-687, div. A, title I, §104(a), Nov. 18, 1988, 102 Stat. 4108; renumbered §5904 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 102-405, title III, §303(a), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 103-446, title V, §504(a), Nov. 2, 1994, 108 Stat. 4663.)

AMENDMENTS

1994—Subsec. (d)(2)(A). Pub. L. 103-446 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "A fee agreement referred to in paragraph (1) of this subsection is one under which (i) the amount of the fee payable to the attorney is to be paid to the attorney by the Secretary directly from any past-due benefits awarded on the basis of the claim, and

(ii) the amount of the fee is contingent on whether or not the matter is resolved in a manner favorable to the claimant."

1992—Subsec. (c)(1). Pub. L. 102-405, §303(a)(1), substituted "Except as provided in paragraph (3), in" for "In".

Subsec. (c)(3). Pub. L. 102-405, §303(a)(2), added par. (3).

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3404 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places in introductory provisions.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration" in introductory provisions and in par. (4).

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration" in par. (4).

Subsec. (c)(1). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (c)(2). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-40, §402(d)(1), substituted "7263(d)" for "4063(d)".

Subsec. (d)(2)(A), (3). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

1988—Subsecs. (c), (d). Pub. L. 100-687 added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: "The Administrator shall determine and pay fees to agents or attorneys recognized under this section in allowed claims for monetary benefits under laws administered by the Veterans' Administration. Such fees—

"(1) shall be determined and paid as prescribed by the Administrator;

"(2) shall not exceed \$10 with respect to any one claim; and

"(3) shall be deducted from monetary benefits claimed and allowed."

1986—Subsec. (b). Pub. L. 99-576 substituted "the Administrator" for "he" in introductory text.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 504(b) of Pub. L. 103-446 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to fee agreements entered into on or after the date of the enactment of this Act [Nov. 2, 1994]."

EFFECTIVE DATE OF 1992 AMENDMENT

Section 303(b) of Pub. L. 102-405 provided that: "Paragraph (3) of section 5904(c) of title 38, United States Code, as added by subsection (a), shall apply with respect to services of agents and attorneys provided after the date of the enactment of this Act [Oct. 9, 1992]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-687 effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

FEE AGREEMENTS

Subsec. (d) of this section not to prevent award of fees and expenses under section 2412(d) of Title 28, Judiciary and Judicial Procedure, but subsec. (d) of this section inapplicable to such award where fees for the same work are received under both sections and claimant's attorney refunds to claimant amount of smaller fee, see section 506(c) of Pub. L. 102-572, set out as a note under section 2412 of Title 28.

APPLICABILITY TO ATTORNEYS FEES

Section 403 of Pub. L. 100-687 provided that: "The amendment to section 3404(c) [now 5904(c)] of title 38, United States Code, made by section 104(a) shall apply only with respect to services of agents and attorneys in cases in which a notice of disagreement is filed with the Veterans' Administration [now Department of Veterans Affairs] on or after the date of the enactment of this division [Nov. 18, 1988]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5905, 7263 of this title.

§ 5905. Penalty for certain acts

Whoever (1) directly or indirectly solicits, contracts for, charges, or receives, or attempts to solicit, contract for, charge, or receive, any fee or compensation except as provided in sections 5904 or 1984 of this title, or (2) wrongfully withholds from any claimant or beneficiary any part of a benefit or claim allowed and due to the claimant or beneficiary, shall be fined as provided in title 18, or imprisoned not more than one year, or both.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1239, §3405; Pub. L. 99-576, title VII, §701(81), Oct. 28, 1986, 100 Stat. 3298; Pub. L. 100-687, div. A, title I, §104(b), Nov. 18, 1988, 102 Stat. 4109; renumbered §5905 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §5(c)(1), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3405 of this title as this section and substituted "5904" for "3404".

Pub. L. 102-83 substituted "1984" for "784".

1988—Pub. L. 100-687 substituted "shall be fined as provided in title 18, or imprisoned not more than one year, or both" for "shall be fined not more than \$500 or imprisoned at hard labor for not more than two years, or both".

1986—Pub. L. 99-576 substituted "to the claimant or beneficiary" for "him".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-687 effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title.

CHAPTER 61—PENAL AND FORFEITURE PROVISIONS

Sec.	
6101.	Misappropriation by fiduciaries.
6102.	Fraudulent acceptance of payments.
6103.	Forfeiture for fraud.
6104.	Forfeiture for treason.
6105.	Forfeiture for subversive activities.

AMENDMENTS

1991—Pub. L. 102-40, title IV, §402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 3501 to 3505 as 6101 to 6105, respectively.

1959—Pub. L. 86-222, §3(b), Sept. 1, 1959, 73 Stat. 453, added item 3505.

§ 6101. Misappropriation by fiduciaries

(a) Whoever, being a guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant or a claimant's estate, or any other person having charge and custody in a fiduciary capacity of money heretofore or hereafter paid under any of

the laws administered by the Secretary for the benefit of any minor, incompetent, or other beneficiary, shall lend, borrow, pledge, hypothecate, use, or exchange for other funds or property, except as authorized by law, or embezzle or in any manner misappropriate any such money or property derived therefrom in whole or in part and coming into such fiduciary's control in any manner whatever in the execution of such fiduciary's trust, or under color of such fiduciary's office or service as such fiduciary, shall be fined in accordance with title 18, or imprisoned not more than five years, or both.

(b) Any willful neglect or refusal to make and file proper accountings or reports concerning such money or property as required by law shall be taken to be sufficient evidence prima facie of such embezzlement or misappropriation.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1239, §3501; Pub. L. 99-576, title VII, §701(82), Oct. 28, 1986, 100 Stat. 3298; renumbered §6101, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §14(d)(7), June 13, 1991, 105 Stat. 286; Pub. L. 102-83, §4(a)(1), Aug. 6, 1991, 105 Stat. 403; Pub. L. 103-446, title XII, §1201(e)(17), Nov. 2, 1994, 108 Stat. 4686.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-446 inserted a comma after "title 18".

1991—Pub. L. 102-40 renumbered section 3501 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Pub. L. 102-54 amended subsec. (a) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "in accordance with title 18" for "not more than \$2,000".

1986—Subsec. (a). Pub. L. 99-576 substituted "a claimant's" for "his" before "estate", and "such fiduciary's" for "his" in three places.

§ 6102. Fraudulent acceptance of payments

(a) Any person entitled to monetary benefits under any of the laws administered by the Secretary whose right to payment thereof ceases upon the happening of any contingency, who thereafter fraudulently accepts any such payment, shall be fined in accordance with title 18, or imprisoned not more than one year, or both.

(b) Whoever obtains or receives any money or check under any of the laws administered by the Secretary without being entitled to it, and with intent to defraud the United States or any beneficiary of the United States, shall be fined in accordance with title 18, or imprisoned not more than one year, or both.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1239, §3502; renumbered §6102, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §14(d)(7), June 13, 1991, 105 Stat. 286; Pub. L. 102-83, §4(a)(1), Aug. 6, 1991, 105 Stat. 403.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3502 of this title as this section.

Pub. L. 102-83 substituted "administered by the Secretary" for "administered by the Veterans' Administration" in subsections (a) and (b).

Pub. L. 102-54 amended section as in effect immediately before the enactment of Pub. L. 102-40 by sub-